

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL ACTION NO. 01-10373-RWZ

UNITED STATES OF AMERICA

v.

DEREK CAPOZZI

ORDER CONCERNING TRIAL

July 28, 2004

ZOBEL, D.J.

This nearly three-year-old case was scheduled to start trial on September 27, 2004. The government recently disclosed to defense counsel and defendants information as to the identity of an alleged murderer or murderers different from the government's evidence and theory of the case as heretofore presented. In light of the new information, four of six attorneys representing three defendants have serious and unwaivable conflicts of interest and have had to withdraw.

One defendant, Derek Capozzi, was not affected, and the government proposed that the trial proceed against him alone on all but three counts in which he is named. The government suggests that two RICO counts (Counts 1 and 2) and one substantive count of obstruction of justice (Count 4) be severed and that he be tried on two counts pertaining to the murder of Aislin Silva (Counts 3 and 7), four counts pertaining to the robbery of Michael Stevens (Counts 8, 9, 10, and 11), and one count of being a felon in possession of a firearm (Count 19). The government estimates that the trial will last one month.

Upon consideration of the government's proposal, the Court is concerned about the inclusion in this trial of the murder counts. They are not related to the robbery of Stevens. They will require substantial expert testimony about DNA analyses, apparently by both sides, which will have to be presented a second time when the rest of the case goes to trial. The DNA evidence presents particular problems for a pro se incarcerated defendant. Disqualified defense counsel had divided this work amongst themselves according to their respective expertise. The potential for delay and disruption abounds; the murder counts will likely quadruple the time for trial.

Accordingly, a hearing is scheduled on August 3, 2004 at 9:30 a.m. concerning the configuration of the trial.

7/28/04

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE